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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,364	03/09/2004	Steven G. Keener	38190/273111	2239
826	7590	06/29/2005	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			SAETHER, FLEMMING	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/796,364		KEENER, STEVEN G.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Flemming Saether		3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 26-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____   | 6) <input type="checkbox"/> Other: ____                                     |

fk

***Restriction/Election***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-15, drawn to a fastener, classified in class 411, subclass 34.
- II. Claims 26-37, drawn to a method of fastening, classified in class 29.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the fastener could be deformed prior to installation or could go undeformed.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Gallo on 6-10-05 a provisional election was made with traverse to prosecute the invention of group I, claims 1-25. Affirmation of this election must be made by applicant in replying to this Office action. Claims 26-37 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Drawings***

The drawings should show the different materials, in particular the plastic composite of the sleeve by different cross-hatching.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the sleeve as in claim 15 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 11-15, are confusing to where it is unclear what applicant intends to claim. In claim 11, line 6-8 the second head is defined as having a diameter greater than the dimension of the aperture thus equating the "second head" to element 22 in the drawings then, in lines 13-14 the "second head" is required to have a "blind adjustment" and is not seen where the second head as defined is capable of having any "adjustment" since it remains fixed in location. Furthermore, again claim 11 requires the "shank" to be the member labeled 12 in the drawings since it is the only member having a head with a dimension greater than the aperture however, then in claims 15 and 16 there is required a "sleeve" having internal threads and the "shank" to have external threads which is impossible in the disclosed device given the requirement of claim 11. Therefore, it is simply unclear what applicant intends the various limitation of claim 11-25 to refer to since they cannot be applied to the disclosed device. It appears claims 11-25 may be drawn to an alternate embodiment.

Due to the confusion and indefiniteness associated with claims 11-25, there could be no meaningful consideration of the claims in relation to the prior art.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 4-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Brecz (US 4,859,128). In Brecz there is disclosed a blind composite-metal fastener comprising a metallic stem (18) defining a deformable first head (37) and a composite sleeve (14) with an enlarged second head (12) wherein the fastener is configured to be inserted through an aperture structural members (30, 32) with the first head being deformed to be larger than the aperture to fasten the members together. The sleeve along with the second head is made of a composite carbon fiber reinforced resin and the stem may be formed of titanium and includes a breakneck groove (44).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lyon (US 4,478,543) in view of Gapp (US, 4,478,543). In the embodiment of Fig. 3, Lyon discloses a blind composite-metal fastener comprising a metallic stem (58) defining a deformable first head (62) and a resin sleeve (54) with an enlarged second head (52) wherein the fastener is configured to be inserted through an aperture structural members (not labeled) with the first head being deformed to be larger than the aperture to fasten the members together. Lyon does not disclose the sleeve to be a resin composite. Gapp teaches to form a fastener as a composite resin particularly a carbon fiber reinforced polyetheretherketone resin. At the time the invention was made, it would have been obvious of one of ordinary skill in the art to make the sleeve out of a composite resin as disclosed in Gapp in order to provide greater strength to the fastener. The greater strength would enable the fastener to sustain greater loads without failure.

Claims 2, 5, 6, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lyon (US 4,478,543) in view of Gapp (US, 4,478,543) as applied to claim 1 above and further in view of Pratt (US 4,457,652). Modified Lyon does not disclose the stem and sleeve with a threaded connection. Pratt discloses a fastener comprising a sleeve (21) and a stem (30) wherein the sleeve and stem are threadedly coupled (at 23) such that as the stem is rotated relative to the sleeve, a head (40) is expanded (see Figs. 1-3). There is further disclosed a breakneck groove (33) as well as an optional plastic sealing insert, an annular metallic locking ring (36) and finally, it is

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noted that the stem is made of titanium. At the time the invention was made, it would have been obvious for one of ordinary skill in the art to provide the fastener of modified Lyon with a threaded type connection as disclosed in Pratt because Pratt teaches the equivalence of threaded and non-threaded (Fig. 11).

Claim 3 is are rejected under 35 U.S.C. 103(a) as being unpatentable over Lyon in view of Gapp as applied to claim 1 above and further in view of Keener (US 6,499,926). Modified Lyon does not disclose a curable organic coating. Keener discloses to provide a fastener with a curable organic coating. At the time the invention was made, it would have been obvious for one of ordinary skill in the art to provide the fastener of modified Lyon with a curable organic coating as disclosed in Keener in order to protect the fastener as discussed in Keener.

### ***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Flemming Saether whose telephone number is 571-272-7071. The examiner can normally be reached on Monday through Friday.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Flemming Saether  
Primary Examiner  
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